

**BEFORE THE
FEDERAL ELECTION COMMISSION**

RECEIVED
FEC MAIL CENTER

2016 OCT -6 PM 4:29

Kim Savage

Darien, IL 60561

Complainant,

v.

Liberty Principles PAC, Inc.
Dan Proft, Treasurer
505 N. Lake Shore Drive #516
Chicago, IL 60611

Khouri for Congress
Paul Kilgore, Treasurer
PO BOX 9007
Aurora, IL 605989007

Respondents.

MUR # 7148

OFFICE OF GENERAL
COUNSEL

2016 OCT -7 PM 12:44

RECEIVED
FEDERAL ELECTION
COMMISSION

COMPLAINT

Complainant files this complaint under 52 U.S.C. § 30109(a)(1) against Liberty Principles PAC, Inc., and Dan Proft, in his official capacity as treasurer, Khouri for Congress, and Paul Kilgore in his official capacity as treasurer ("Respondents") for failing to report in-kind contributions in violation of the Federal Election Campaign Act of 1971, as amended ("the Act") and Federal Election Commission ("FEC" or "Commission") regulations. The Commission should immediately investigate and take appropriate remedial action against Respondents for these clear violations of law, as described below.

A. FACTS

According to publicly available news reports, Liberty Principles PAC is distributing unsolicited printed publications to Illinois voters throughout the state in support of Tonia Khouri's congressional campaign.¹ The publications are mailed to Illinois residents without their

request or subscription, or are “left in high traffic areas for people to pick up.”² The papers are distributed under one of 14 different regional organizations - Sangamon Sun, Chambana Sun, Dupage Policy Journal, East Central Reporter, Kankakee Times, Lake County Gazette, McHenry Times, Metro East Sun, North Cook News, Rock Island Today, SW Illinois News, West Central Reporter, and West Cook News - each of which has its own corresponding website with similar content, design, format, and logo.³ The printed publications are distributed by Liberty Principles PAC, a federally registered political committee “run by conservative radio host and former GOP candidate for governor, Dan Proft.”⁴

B. LEGAL ARGUMENT

The Federal Election Campaign Act of 1971 regulates the making of “contributions” and “expenditures” in connection with federal elections.⁵ From the definition of “expenditure,” the Act exempts “any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate ...”⁶

¹ Bernard Schoenburg, *GOP activist Proft Involved in Papers Across the State*, The State Journal-Register (Jul. 30, 2016), available at <http://www.sj-r.com/opinion/20160730/bernard-schoenburg-gop-activist-proft-involved-in-papers-across-state>; see also *Pondering her Children's Future Prompts Khouri's Congressional Run*, DuPage Policy Journal (Aug. 14, 2016); *Government Notes: Tonia Khouri criticizes Obama Administration for Sending \$400 million to Iran*, DuPage Policy Journal (Aug. 15, 2016).

²*Id.*; see also Jackie Spinner, *An Illinois PAC Decides to get into Local News—Just in Time for the Primary*, Columbia Journalism Review (Mar. 15, 2016), available at http://www.cjr.org/united_states_project/illinois_pac_newspapers.php; Mike Riopell, *Newspaper Run by Dan Proft's PAC Hits Lake County*, Daily Herald (Feb. 19, 2016), available at <http://www.dailyherald.com/article/20160218/news/160218834/>.

³ See, e.g., <http://sangamonsun.com>; <http://eastcentralreporter.com>; <http://rockislandtoday.com>; <http://kankakeetimes.com>.

⁴ Riopell, *supra* note 2.

⁵ See 52 U.S.C. § 30101 *et seq.*

⁶ 52 U.S.C. § 30101(9)(B)(i).

Commission rules also provide parallel exemptions from the definition of “contribution” and “expenditure” for the costs incurred in covering or carrying such news stories, commentaries or editorials.⁷ This exemption is referred to as the “press exemption.”

In determining whether the press exemption applies, the Commission normally applies a two-step analysis to the challenged conduct. First, it asks whether the entity engaging in the activity is a “press entity” under the Act and Commission regulations.⁸ Second, it asks whether the press entity is owned or controlled by a political party, political committee, or candidate; and whether the entity is acting as a press entity in performing the activity.⁹

i. Definition of Press Entity is Not Satisfied

With regard to the first question – whether the entity qualifies as a “press entity” – “the Commission has focused on whether the entity in question is in the business of producing on a regular basis a program that disseminates news stories, commentary, and/or editorials.”¹⁰ The entity behind these publications, Liberty Principles PAC, does not meet the definition of press entity because (1) they are not in the business of producing media content on a regular basis, and (2) their publications lack the requisite indicia of being a legitimate periodical.

At first glance, these papers may appear to be in the “normal press-business” of informing readers through news stories and commentary, but further review confirms this is not

⁷ See 11 C.F.R. §§ 100.73, 100.132.

⁸ See Explanation and Justification to the Internet Communications Regulations, 71 Fed. Reg. 18589, 18607 (Apr. 12, 2006); FEC Adv. Op. 2005-16 (Fired Up); Reader’s Digest Association v. FEC, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

⁹ *Id.*

¹⁰ See FEC Adv. Op. 2008-14 (Mclothc, Inc.).

1004444091
444047444091

the case. For example, the publications claim to cover activities of local government bodies, but news reports indicate that the papers simply reproduce information already made available to the public, like meeting agendas.¹¹ Additionally, these publications did not exist just a few months ago; they began appearing in voter's mailboxes "just in time for the primary" elections in Illinois.¹² None of these features indicate this is a normal press entity at work.

Moreover, these publications lack any indicia of a legitimate publication. In fact, Don Craven, the General Counsel of the Illinois Press Association, publicly challenged the legitimacy of these papers, suggesting they were "crafted to look like newspapers" but not an actual newspaper.¹³ Mr. Craven's assessment makes sense, given that the papers "include[] no mailing address or phone number, and give[] readers no information about who runs it," other than an email address and Twitter account.¹⁴ Voters receive copies without ever subscribing or requesting access to them, and because there is no mailing address or phone number provided on the publication, they have no way of knowing where the paper came from or who produced it. Finally, the papers were mailed free of charge to Illinois voters, or "left in high traffic areas for people to pick up" for free.¹⁵ Confused voters have filed complaints with the Illinois State Board of Elections, asking for an investigation into these "faux newspapers."¹⁶

¹¹ Rick Miller, *The "Communications Platform" Stirs Controversy*, Capital Fax (Jul. 25, 2016), available at <http://capitolfax.com/2016/07/25/the-communications-platform-stirs-controversy/>.

¹² Spinner, *supra* note 2; see also Tom Collins, *It Looks like a Newspaper, But it Isn't*, News Tribune (Jul. 23, 2016), available at <http://newstrib.com/main.asp?SectionID=2&SubSectionID=27&ArticleID=52387> (quoting Don Craven, General Counsel of the Illinois Press Association, who said the papers came out "hot and heavy before the primary.").

¹³ Collins, *supra* note 12.

¹⁴ Miller, *supra* note 11.

¹⁵ *Id.*; see also Spinner, *supra* note 2; Riopell, *supra* note 2.

¹⁶ Collins, *supra* note 13.

These papers were not created as part of a regular publishing routine, but rather exemplify a short-term communications scheme aimed at influencing elections in Illinois.¹⁷ As publicly available news reports indicate, they operate more like political propaganda, "function[ing] as standard election mailers."¹⁸ While the press exemption has been interpreted to allow for "unabashedly progressive" content and forms of express advocacy,¹⁹ it should not apply to political propaganda disguised as media content to evade regulation.

ii. *Exemption Does Not Apply because Publication Controlled by Political Committee*

Even if the Liberty Principles PAC is deemed to be a "press entity" under the Commission's definition, the PAC still fails the second prong of the press exemption test. The exemption covers only those media entities that are not owned or controlled by a political party, political committee, or a candidate.²⁰ Thus, even if the entity behind these publications is considered a press entity, the exemption still does not apply because the entity in this instance is a federally registered political committee, Liberty Principles PAC.²¹ As such, they do not qualify for the press exemption.²²

In determining who controls a media entity, the FEC looks to the identity of the person(s) who "exercises day-to-day control over which stories are featured."²³ According to news reports,

¹⁷ See Fed. Election Comm'n v. Massachusetts Citizens for Life, Inc., 769 F.2d 13, 21 (1st Cir. 1985), *aff'd*, 479 U.S. 238 (1986) (finding that when "50,000 copies of...[a publication] were distributed at no cost to a large number of people; and the editions contained no printed volume or issue number nor any masthead designating them as newspapers or periodicals" the press exemption does not apply.).

¹⁸ Spinner, *supra* at note 2.

¹⁹ See FEC Adv. Op. 2005-16 (Fired Up).

²⁰ 71 Fed. Reg. 18589, 18607 (Apr. 12, 2006).

²¹ FEC Statement of Organization (filed Feb. 27, 2012).

²² 71 Fed. Reg. 18589, 18606 (Apr. 12, 2006).

the leader of Liberty Principles PAC, Dan Proft, has publicly taken credit for distributing these publications to Illinois voters.²⁴ Sources indicate that Proft has boasted about the publication's "point of view,"²⁵ and explained they are "designed to cover issues ignored by other media and also to influence policy and elections."²⁶ Such comments suggest Proft and the Liberty Principles PAC exercise control over these publications and thus cannot qualify for the press exemption.

iii. *Because Press Exemption Does Not Apply, Publication Costs are Reportable as In-Kind Contributions*

Because the press exemption does not apply in this instance, the costs associated with these publications are reportable under the Act as coordinated communications.²⁷ Under the Act, coordinated communications are "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents."²⁸ An expenditure for a communication is considered coordinated if it: (1) is paid for by an entity other than the candidate or his campaign; (2) meets certain content standards, which may be met when a public communication refers to a clearly identified presidential candidate and is publicly disseminated in the clearly identified candidate's jurisdiction within 90 days of the candidate's election; and (3) meets certain conduct standards regarding the coordination between the entity financing the communication and the campaign.²⁹

²³ See *id.*

²⁴ Riopell, *supra* note 2.

²⁵ *Id.*

²⁶ Spinner, *supra* note 2.

²⁷ 11 C.F.R. § 100.16(a) (defining an independent expenditure as an expenditure for a communication "expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents.>").

²⁸ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20.

A coordinated communication is treated as an in-kind contribution to a candidate with whom it is coordinated and must be reported as such.³⁰

Here, all three prongs of the test for coordinated communication are met. First, the publications are paid for and distributed by Liberty Principles PAC, an entity other than the candidate or his campaign.³¹ Dan Proft has publicly taken credit for publishing and distributing these papers. Second, these papers satisfy at least two different content standards from the test. The papers quote directly from Tonia Khouri's campaign website and her official Facebook page, republishing and distributing Khouri's campaign materials to readers.³² Moreover, these papers clearly identify a candidate for the House of Representatives, Tonia Khouri, in her jurisdiction, less than 90 days before the election.³³

Finally, the conduct prong of the test is easily satisfied based on Dan Proft's involvement in Tonia Khouri's congressional campaign and his position as treasurer and leader of Liberty Principles PAC.³⁴ Mr. Proft has raised money for Tonia Khouri's campaign,³⁵ attended Ms. Khouri's campaign events,³⁶ even sharing a podium with the candidate,³⁷ and hosted other

³⁰ See 11 C.F.R. §§ 109.20(b), 109.21.

³¹ 11 C.F.R. §§ 109.21(b).

³² *Id.* § 109.21(a)(1).

³³ *Pondering her Children's Future Prompts Khouri's Congressional Run*, DuPage Policy Journal (Aug. 14, 2016); *Government Notes: Tonia Khouri criticizes Obama Administration for Sending \$400 million to Iran*, DuPage Policy Journal (Aug. 15, 2016).

³⁴ *Id.*

³⁵ FEC Statement of Organization (filed Feb. 27, 2012).

³⁶ Rich Harvest Farms Fundraiser (Dec. 3, 2015), <http://toniakhour.com/toniakhour/wp-content/images/Rich-Harvest-Farms-Fundraiser.pdf>.

³⁷ Tonia Khouri, Twitter (Feb. 18, 2016 5:07 PM EST), https://twitter.com/tonia_khour/status/700486928936923137.

political events with the candidate.³⁸ Such activity surely satisfies the conduct prong, demonstrating that, at a minimum, that the expenditures supporting Ms. Khouri's campaign are either at the request or suggestion of her campaign, or there was "substantial discussion" with the campaign or candidate about the publication of the papers.³⁹

Because the expenditures made by Proft's PAC, Liberty Principles, appear to satisfy all three prongs of the coordination test, they constitute a contribution to the campaign, which has not been reported by either the PAC,⁴⁰ or Tonia Khouri's congressional campaign committee.⁴¹ Such a failure to report these costs is a violation of the reporting requirements under the Act for coordinated communications, and depending on the costs associated with producing these papers, likely to violate the contributions limits under the Act as an excessive contribution.⁴²

C. REQUESTED ACTION

Expenditures made from Liberty Principles PAC in support of Tonia Khouri's congressional campaign constitute "coordinated communications" and in-kind contributions to the Khouri campaign. Respondents have failed to report such contributions in violation of the Act and Commission regulations. We respectfully request that the Commission investigate these violations and any additional coordination between Liberty Principles PAC and the Khouri campaign, to determine the extent to which they used Khouri campaign strategy in creating and

³⁷ *Id.*

³⁸ Women's Leadership Panel & Dinner, <http://www.narwo.net/Women-s-Leadership-Panel.html>; GOP Food Rally, <http://events.r20.constantcontact.com/register/event?llr=cfzkmngab&ocidk=a07eb6ch8z7b46ae74>.

³⁹ See 11 C.F.R. § 109.21(d).

⁴⁰ See e.g., FEC July Quarterly Report, Khouri for Congress (filed Jul. 15, 2016); FEC April Quarterly, Khuori for Congress (filed Jul. 6, 2016).

⁴¹ See FEC July Quarterly Report, Liberty Principles PAC, Inc. (filed Jul. 12, 2016).

⁴² 11 C.F.R. §§109.21(b); 104.3(b)(3)(vii)(A); 104.4(a), (b),(c).

publishing these papers. We also ask the Commission to enjoin Respondents from further violations of the Act and assign the maximum fines permitted by law.

Sincerely,



SUBSCRIBED AND SWORN to before me this 5th October day of September.



Notary Public

My Commission Expires:

9-5-17



132979491.1

Government Notes

Tonia Khouri criticizes Obama administration for sending \$400 million to Iran

Tonia Khouri, the Republican candidate in Illinois' 11th Congressional District, recently posted on Facebook decrying the Obama administration's decision to secretly airlift \$400 million in cash to Iran simultaneous to the release of four detained Americans in Tehran.

"News that the Obama Administration secretly sent \$400M to Iran as American hostages were freed is an example of the lack of transparency—and even more importantly, the lack of strong leadership—that we've seen from this administration for years," the post read.

"This administration put a price on the heads of Americans with this secret exchange—not to mention the deal they made with Iran, who declared us an enemy long before and whom we should not be negotiating with. We need to elect REAL LEADERS that will lead both our nation and the world, especially during these troubling times. This is why Bill Foster's failed representation is no longer sufficient, and why I'm running for Congress. I want to empower Americans, NOT the establishment."

Elmhurst first responders gather for training events

In a joint effort to adhere to best practices, the city of Elmhurst and Elmhurst College sponsored a recent series of training events for police, fire and security staffers in the community and on campus.

During the exercises, police officers, firefighters and Elmhurst College safety personnel—along with DuPage Public Safety Communications, or "DU-COMM," 9-1-1 dispatchers and community volunteers—participated in scenarios to learn procedures for casualties such as mass shootings.

Settings were devised to resemble real-life injuries, rehearse leadership and response procedures, and safely apprehend violent perpetrators, with a primary focus on speed of response.

Elmhurst's public safety departments plan such drills annually to keep first responders current on tactics, ensure clear communication and enhance overall public safety in the jurisdiction. Several scenarios depend on community liaisons playing a potential part in evacuations or other crisis procedures.

Public safety training also serves to strengthen the alliance and working relationships among Elmhurst's public safety agencies and Elmhurst civic organizations. This type of training is valuable to all emergency responders involved.

DU-COMM is a large consolidated intergovernmental agency for first responders in DuPage County since 1976. Serving 45 county agencies, it is one of Illinois' largest consolidated 9-1-1 centers, processing more than 1.1 million phone calls, and more than 600,000 police and Fire/EMS incidents in 2015.

'No More Madigan' pledge movement gains steam

Mike Strick, Republican candidate for House District 84, recently called on his fellow candidates and current members of the General Assembly to

remove Mike Madigan (D-Dist. 22) as House Speaker.

"I started the revolution to end Michael Madigan's reign by January 2017," Strick said. "I am challenging ALL candidates for State Representative to sign a pledge stating that they will NOT vote for him for Speaker of the House in the upcoming term. I mailed that pledge to every House candidate in Illinois. Some have already signed! Unfortunately, my opponent was not one of them. Go to NoMoreMadigan.com for more details. Together we can take the state away from the insiders and give it back to the people."

Madigan has been Speaker for 31 of his 45 years in the Illinois House. His opponents lay the blame for the state's current budget woes on Madigan, including the state entering its second year without a budget in place. The unbalanced budget presented to the House in May was \$7 billion in the red. It was voted down by the Senate.

Strick's mailing and NoMoreMadigan website has already generated responses from candidates and sitting lawmakers. Joining Strick in the pledge to remove Madigan from the Speaker's seat are candidates Heidi Holan and Andy Kirchoff, and Rep. Jeanne Ives (R-Dist. 42).

Pink T-shirts promote breast cancer awareness

Purchasers of custom pink T-shirts designed to raise public perception of breast cancer during October—traditionally designated Breast Cancer Awareness Month—will have a chance to pose for a photo

with
ber.
Me
Depa
fight
for a
order
bard
for 6
at Ft
Road
hour
p.m.
Th
are n
at Fu
donat
tan I
inclu
date
the tr
of Se
Re
tact I
geoff
for m
Th
Guess
qual
and I
work

Smith

From page one

the corrupt rule of House Speaker Mike Madigan. He rewards his foot soldiers in the General Assembly with hundreds of thousands of dollars in campaign donations in exchange for supporting the agenda of Madigan insiders. That agenda has given us fewer jobs, less opportunity and more dysfunction."

Smith said she believes that Illinois can make a comeback, but only with a reformed system. This



Michelle Smith

civic-minded officials who value good government. They will eliminate entrenched politicians whose interests too often align with those of their donors," she wrote. "Most

"For the past 30 years, our state has endured the corrupt rule of House Speaker Mike Madigan."

hostage to a policy program that puts the interests of political insiders over those of our citizens. Our state needs legislators who will vote for term limits to protect govern-

Chicago State

From page one

In 2015, an audit found that Chicago State spent \$111 million on "compensation and benefits," including, \$67 million on salaries, \$18 million on employee insurance and \$26 million on pension contributions made for its employees.

Chicago State had 357 full-time faculty and staff in 2015, according to the Illinois State Board of Education. They earned an average of \$135,341 in total compensation, including \$81,480 in

Pondering her children's future prompts Khouri's congressional run

1-800-474-4001

By Verna Casano

Contemplating her children's future propelled Toni Khouri, the Republican nominee for Illinois' 11th District congressional race, to have her name placed on the ballot.

In a special message to mothers posted on her campaign website on May 6, Khouri answered the question mothers often ask her about why she chose to run for public office.

"We have three children ranging from a sophomore in college, to a high schooler, to a middle schooler," Khouri said. "And when I start thinking about their future and the future of our country and the direction it's going, I needed to do something about it."

When people ask her why she is running for Congress, Khouri said the answer is simple: "What are the good



Toni Khouri

people of this country supposed to do, throw our hands up? Give up? We can't," she said.

Khouri said she is standing up and taking action and asked other

mothers to join her.

Khouri defeated rivals Nick Stella and Herman White to clinch the Republican primary in March, and will face incumbent Bill Foster in the November general election.

Her three major areas of

focus are the quality of education, the safety of communities, and the opportunity for work and job growth within the 11th district.

"Happy Mother's Day to the women who have one of the most important jobs in our society: raising our future generation," Khouri wrote on her website.

Khouri and her husband, Joe, own a home services company called Green T, which serves more than 22,000 customers in the Chicagoland area.

She serves as the chairman of economic development on the DuPage County Board and resides in Aurora.

The 11th District covers parts of Cook, DuPage, Kane, Kendall and Will counties, including Aurora, Naperville, Bolingbrook, Burr Ridge and Joliet.

From the publisher

Why DuPage Policy Journal

Our representative republic relies on an informed citizen

As such, our goal is two-fold: state and local policy matter assess whether the policy decisions are aligned with you, how those decisions impact you, to offer quality local content what's happening in the con

We will present the policy or frame the choices being offered in a dialogue that produces the best available.

We will provide contextual information to give you the whole story in a forum where we speak with you.

Consistent with that notion, we welcome your story ideas, questions, and your constructive stories you find helpful, which converse, which stories matter.

We want this outlet to be of value, will only happen if we both respect the broad spectrum of issues we cover, and, with content.

Thank you, DuPage Policy Journal

Contact us

news@dupagepolicyjournal.com
phone: 708-209-8012
twitter: @dupagejournal

The data presented in this is: public records and has been inadvertently presented any via email or phone. If any error will issue a prompt correction

Government Notes

Lisle utility consumers set for Smart Meter upgrade

Lisle residents can expect contact from authorized ComEd or Corix representatives for Smart Meter installation

a new public parking deck slated for construction at Illinois and 1st streets, in its core downtown district across from Fox Island Square.

City officials estimate that the project will take approximately five business days with work set to be finished

form beginning at 6:30 p.m.

Children ages 12 and younger can participate in the 100-yard youth dash, which starts at 4 p.m. at the football-stadium track. The race will have divisions for ages 4-7 and 8-12.

The 5K which starts at 5 p.m. will

empic engine and new t over t As rates